



In Reply Refer to:

EC-04/45

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office

Ecological Services

927 North Main Street, Building D

Pleasantville, New Jersey 08232

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MAY 24 2004

Mr. Stephen Cipot, Remedial Project Manager
U.S. Environmental Protection Agency, Region II
Emergency and Remedial Response Division
Program Support Branch
290 Broadway, 18th Floor
New York, New York 10007-1866

Dear Mr. Cipot:

The U.S. Fish & Wildlife Service (Service) New Jersey Field Office has reviewed the April 2004 *Remedial Action Work Plan (RAWP) for Source Reduction* prepared for the L. E. Carpenter & Company Site (Site), Wharton, Morris County, New Jersey, and offers the following comments as technical assistance.

The Service is pleased that the RAWP reflects the March 27, 2003 comments forwarded through the Biological Technical Assistance Group (BTAG), and discussed during the October 7, 2003 meeting with Site representatives at the U.S. Environmental Protection Agency's (EPA) Edison, New Jersey facility.

Under Section 2.5 Natural Resource Issues, a discussion of the Rockaway River and its designated uses should have been included. Specifically, that portion of the Rockaway River which borders the Site is classified under N.J.A.C. 7:9B-1.15 as Freshwater 2, Trout Maintenance (FW2-TM) Category 1 (C1). The State-designated uses of FW2 surface waters as defined in N.J.A.C. 7:9B-1.12(c) include: maintenance, migration and propagation of the natural and established biota; primary and secondary contact recreation; industrial and agricultural water supply; public potable water supply after legally required treatment; and any other reasonable uses. Trout maintenance surface waters are designated for the support of trout throughout the year. Moreover, C1 surface waters are designated for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). The Service recommends that the State designated uses of the Rockaway River be incorporated into the subject document.

The RAWP states (on page 2-10) that the Service's Great Swamp National Wildlife Refuge (GSNWR) was consulted to confirm the current status of federally listed threatened and endangered animal and plant species occurring in New Jersey. Although knowledgeable, the

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GSNWR is not the appropriate Service office for threatened and endangered species consultation. This review and coordination with the GSNWR does not constitute consultation under the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). The EPA initiated informal ESA Section 7 consultation for the Site with the Service in a letter dated May 1, 1991 (enclosed). In response, the Service determined, in a letter dated June 3, 1991 (enclosed), that the federally listed as threatened plant swamp pink (*Helonias bullata*) was documented within 10 miles of the Site, and that a survey for this species in Site-associated wetlands be conducted if those wetlands would be impacted by the remedial action. A review of our administrative record did not reveal any additional consultation. As there have been significant modifications to the project since 1991, reinitiating informal consultation pursuant to Section 7 of the ESA is required. The EPA should direct representatives of L.E. Carpenter & Company to reinitiate informal Section 7 consultation with the Service's New Jersey Field Office, located in Pleasantville, New Jersey, prior to the commencement of the remedial action. Please direct informal consultation reinitiation correspondence to:

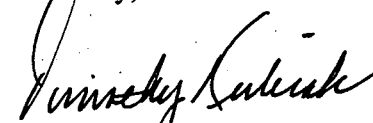
Darren Harris
U.S. Fish & Wildlife Service
New Jersey Field Office
927 N. Main Street, Bldg D
Pleasantville, New Jersey 08232
609/646-9310, extension 44.

To expedite informal consultation, refer to control # EC-04/45 in your request. Moreover, pursuant to 50 CFR Part 402.09, no federal agency or any applicant shall make irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating Section 7(a)(2) of the ESA. This prohibition is in force during the consultation process and continues until the requirements of Section 7(a)(2) are satisfied.

In Appendix M, page 16, section IV.6.5 Endangered Species, the Service is unclear as to what habitat survey report is being referred to in the EPA comments. Again, reinitiating informal consultation pursuant to Section 7 of the ESA is required.

The Service appreciates the opportunity to review the subject document, and is interested in reviewing any future Site-related documents. If you have further questions, please contact Environmental Contaminants Specialist Clay Stern of my staff at 609/383-3938, extension 27.

Sincerely,


Timothy Kubiak
Assistant Supervisor

Enclosures (2)